

Appendix B
(Cal. Code Regs., tit. 2, § 7438, app. B)

**RULE 989.3 REQUESTS FOR ACCOMMODATIONS BY PERSONS WITH
DISABILITIES**

(a) **[Policy]** It shall be the policy of the courts of this state to assure that qualified individuals with disabilities have equal and full access to the judicial system. Nothing in this rule shall be construed to impose limitations or to invalidate the remedies, rights, and procedures accorded to any qualified individuals with disabilities under state or federal law.

(b) **[Definitions]** The following definitions shall apply under this rule:

(1) "Qualified individuals with disabilities" means persons covered by the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.); Civil Code section 51 et seq.; and other related state and federal laws; and includes individuals who have a physical or mental impairment that substantially limits one or more of the major life activities; have a record of such an impairment; or are regarded as having such an impairment.

(2) "Applicant" means any lawyer, party, witness, juror, or any other individual with an interest in attending any proceeding before any court of this state.

(3) "Accommodation(s)" may include, but are not limited to, making reasonable modifications in policies, practices, and procedures; furnishing, at no charge, to the qualified individuals with disabilities, auxiliary aids and services, which are not limited to equipment, devices, materials in alternative formats, and qualified interpreters or readers; and making each service, program, or activity, when viewed in its entirety, readily accessible to and usable by qualified individuals with disabilities requesting accommodations. While not requiring that each existing facility be accessible, this standard, known as "program accessibility," must be provided by methods including alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or program to an accessible facility, or provision of services at alternate sites.

(4) The "rule" means this rule regarding requests for accommodations in state courts by qualified individuals with disabilities.

(5) "Confidentiality" applies to the identity of the applicant in all oral or written communications, including all files and documents submitted by an applicant as part of the application process.

(c) **[Process]** The following process for requesting accommodations is established:

(1) Applications requesting accommodation(s) pursuant to this rule may be presented ex

parte in writing, on a form approved by the Judicial Council and provided by the court, or orally as the court may allow. Applications should be made at the designated Office of the Clerk, or to the courtroom clerk or judicial assistant where the proceeding will take place, or to the judicial officer who will preside over the proceeding.

(2) All applications for accommodations shall include a description of the accommodation sought, along with a statement of the impairment that necessitates such accommodation. The court, in its discretion, may require the applicant to provide additional information about the qualifying impairment.

(3) Applications should be made as far in advance of the requested accommodations implementation date as possible, and in any event should be made no less than five court days prior to the requested implementation date. The court may, in its discretion, waive this requirement.

(4) Upon request, the court shall place under seal the identity of the applicant as designated on the application form and all other identifying information provided to the court pursuant to the application.

(d) **[Permitted communication]** An applicant may make ex parte communications with the court; such communications shall deal only with the accommodation(s) the applicant's disability requires and shall not deal in any manner with the subject matter or merits of the proceedings before the court.

(e) **[Grant of accommodation]** A court shall grant an accommodation as follows:

(1) In determining whether to grant an accommodation and what accommodation to grant, the court shall consider, but is not limited by, the provisions of the Americans with Disabilities Act of 1990 and related state and federal laws.

(2) The court shall inform the applicant in writing of findings of fact and orders, as may be appropriate, that the request for accommodations is granted or denied, in whole or in part, and the nature of the accommodation(s) to be provided, if any.

(f) **[Denial of accommodation]** An application may be denied only if the court finds that:

(1) The applicant has failed to satisfy the requirements of this rule; or

(2) The requested accommodation(s) would create an undue financial or administrative burden on the court; or

(3) The requested accommodation(s) would fundamentally alter the nature of the service, program, or activity.

(g) **[Review procedure]**

(1) An applicant or any participant in the proceeding in which an accommodation has been denied or granted may seek review of a determination made by nonjudicial court personnel within 10 days of the date of the notice of denial or grant by submitting a request for review to the judicial officer who will preside over the proceeding or to the presiding judge if the matter has not been assigned.

(2) An applicant or any participant in the proceeding in which an accommodation has been denied or granted may seek review of a determination made by a presiding judge or any other judicial officer of a court within 10 days of the date of the notice of denial or grant by filing a petition for extraordinary relief in a court of superior jurisdiction.

(h) **[Duration of accommodations]** The accommodations by the court shall commence on the date indicated in the notice of accommodation and shall remain in effect for the period specified in the notice of accommodation. The court may grant accommodations for indefinite periods of time or for a particular matter or appearance.

Adopted, eff. Jan. 1, 1996.

EVIDENCE CODE

§ 754. Deaf or Hearing Impaired Persons; Interpreters; Qualifications; Guidelines; Compensation; Questioning; Use of Statements

(a) As used in this section, "individual who is deaf or hearing impaired" means an individual with a hearing loss so great as to prevent his or her understanding language spoken in a normal tone, but does not include an individual who is hearing impaired provided with, and able to fully participate in the proceedings through the use of, an assistive listening system or computer-aided transcription equipment provided pursuant to Section 54.8 of the Civil Code.

(b) In any civil or criminal action, including, but not limited to, any action involving a traffic or other infraction, any small claims court proceeding, any juvenile court proceeding, any family court proceeding or service, or any proceeding to determine the mental competency of a person, in any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, or any administrative hearing, where a party or witness is an individual who is deaf or hearing impaired and the individual who is deaf or hearing impaired is present and participating, the proceedings shall be interpreted in a language that the individual who is deaf or hearing impaired understands by a qualified interpreter appointed by the court or other appointing authority, or as agreed upon.

(c) For purposes of this section, "appointing authority" means a court, department, board, commission, agency licensing or legislative body, or other body for proceedings requiring a qualified interpreter.

(d) For the purposes of this section, "interpreter" includes, but is not limited to, an oral

interpreter, a sign language interpreter, or a deaf-blind interpreter, depending upon the needs of the individual who is deaf or hearing impaired.

(e) For purposes of this section, "intermediary interpreter" means an individual who is deaf or hearing impaired, or a hearing individual who is able to assist in providing an accurate interpretation between spoken English and sign language or between variants of sign language or between American Sign Language and other foreign languages by acting as an intermediary between the individual who is deaf or hearing impaired and the qualified interpreter.

(f) For purposes of this section, "qualified interpreter" means an interpreter who has been certified as competent to interpret court proceedings by a testing organization, agency, or educational institution approved by the Judicial Council as qualified to administer tests to court interpreters for individuals who are deaf or hearing impaired.

(g) In the event that the appointed interpreter is not familiar with the use of particular signs by the individual who is deaf or hearing impaired or his or her particular variant of sign language, the court or other appointing authority shall, in consultation with the individual who is deaf or hearing impaired or his or her representative, appoint an intermediary interpreter.

(h) Prior to July 1, 1992, the Judicial Council shall conduct a study to establish the guidelines pursuant to which it shall determine which testing organizations, agencies, or educational institutions will be approved to administer tests for certification of court interpreters for individuals who are deaf or hearing impaired. It is the intent of the Legislature that the study obtain the widest possible input from the public, including, but not limited to, educational institutions, the judiciary, linguists, members of the State Bar, court interpreters, members of professional interpreting organizations, and members of the deaf and hearing-impaired communities. After obtaining public comment and completing its study, the Judicial Council shall publish these guidelines. By January 1, 1997, the Judicial Council shall approve one or more entities to administer testing for court interpreters for individuals who are deaf or hearing impaired. Testing entities may include educational institutions, testing organizations, joint powers agencies, or public agencies.

Commencing July 1, 1997, court interpreters for individuals who are deaf or hearing impaired shall meet the qualifications specified in subdivision (f).

(i) Persons appointed to serve as interpreters under this section shall be paid, in addition to actual travel costs, the prevailing rate paid to persons employed by the court to provide other interpreter services unless such service is considered to be a part of the person's regular duties as an employee of the state, county, or other political subdivision of the state. Payment of the interpreter's fee shall be a charge against the county, or other political subdivision of the state, in which that action is pending. Payment of the interpreter's fee in administrative proceedings shall be a charge against the appointing board or authority.

(j) Whenever a peace officer or any other person having a law enforcement or prosecutorial function in any criminal or quasi-criminal investigation or proceeding questions or otherwise interviews an alleged victim or witness who demonstrates or alleges deafness or hearing impairment, a good faith effort to secure the services of an interpreter shall be made, without any unnecessary delay unless either the individual who is deaf or hearing impaired affirmatively indicates that he or she does not need or cannot use an interpreter, or an interpreter is not otherwise required by Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted thereunder.

(k) No statement, written or oral, made by an individual who the court finds is deaf or hearing impaired in reply to a question of a peace officer, or any other person having a law enforcement or prosecutorial function in any criminal or quasi-criminal investigation or proceeding, may be used against that individual who is deaf or hearing impaired unless the question was accurately interpreted and the statement was made knowingly, voluntarily, and intelligently and was accurately interpreted, or the court makes special findings that either the individual could not have used an interpreter or an interpreter was not otherwise required by Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted thereunder and that the statement was made knowingly, voluntarily, and intelligently.

(l) In obtaining services of an interpreter for purposes of subdivision (j) or (k), priority shall be given to first obtaining a qualified interpreter.

(m) Nothing in subdivision (j) or (k) shall be deemed to supersede the requirement of subdivision (b) for use of a qualified interpreter for individuals who are deaf or hearing impaired participating as parties or witnesses in a trial or hearing.

(n) In any action or proceeding in which an individual who is deaf or hearing impaired is a participant, the appointing authority shall not commence proceedings until the appointed interpreter is in full view of and spatially situated to assure proper communication with the participating individual who is deaf or hearing impaired.

(o) Each superior court shall maintain a current roster of qualified interpreters certified pursuant to subdivision (f).

(Amended by Stats. 1995, c. 143 (A.B. 1833), s1. eff. July 18, 1995.)

